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6 **UNITED STATES DISTRICT COURT**
7 **NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

8 JASON MUSSYNSKI,
9 Plaintiff,
10 v.
11 PHILLIPS & BURNS, LLC, ANGELA
12 PRICE, and ANGELA RUSSO,
13 Defendants.

Case No. 07-04828 JW HRL

AMENDED COMPLAINT

15
16 **I. INTRODUCTION**

17 1. This is an action for damages brought by consumers for Defendants' violations of the
18 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter "FDCPA") and
19 California's Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 *et seq.*
20 (hereinafter, "state Act"), which prohibit debt collectors from engaging in abusive,
21 deceptive and unfair practices. Plaintiff alleges that Defendants sent letters that were
22 false, deceptive, misleading in violation of the debt collection laws. Defendants also
23 engaged in unlawful and intrusive conduct by communicating with someone known to be
24 represented by counsel.
25

- 1
2. According to 15 U.S.C. § 1692:
- 3
(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt
4 collection practices by many debt collectors. Abusive debt collection practices
contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs,
and to invasions of individual privacy.
- 5
(b) Existing laws and procedures for redressing these injuries are inadequate to protect
6 consumers.
- 7
(c) Means other than misrepresentation or other abusive debt collection practices are available
for the effective collection of debts.
- 8
(d) Abusive debt collection practices are carried on to a substantial extent in interstate
9 commerce and through means and instrumentalities of such commerce. Even where
abusive debt collection practices are purely intrastate in character, they nevertheless
10 directly affect interstate commerce.
- 11
(e) It is the purpose of this title to eliminate abusive debt collection practices by debt
12 collectors, to insure that those debt collectors who refrain from using abusive debt
13 collection practices are not competitively disadvantaged, and to promote consistent State
action to protect consumers against debt collection abuses.

14
II. JURISDICTION AND VENUE

- 15
3. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. § 1337, and
16 supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. § 1337.
17 Declaratory relief is available pursuant to 28 U.S.C. § 2201 and § 2202. Venue in this
18 District is proper in that Defendants transact business here and the conduct complained of
19 occurred here.

20
III. PARTIES

- 21
4. Plaintiff JASON MUSSYNSKI (hereinafter “Mr. Mussynski”) is a natural person
22 residing in Santa Clara County, California.
23
5. Mr. Mussynski is a “consumer” as defined by 15 U.S.C. § 1692a(3) and under California
24 Civil Code § 1788.2. Mr. Mussynski is a “debtor” as defined by California Civil Code §
25 1788.2.

- 1 6. Defendant PHILLIPS & BURNS, LLC (hereinafter “Defendant Collector”) is a law
- 2 office and limited liability company in the State of New York and regularly engages in
- 3 the collection of debt with a principal place of business of 461 Ellicott Street, 3rd Floor,
- 4 Buffalo, New York 14203.
- 5 7. Defendant Collector is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal.
- 6 Civil Code § 1788.2.
- 7 8. Defendant ANGELA PRICE (hereinafter “Defendant Price”) is an employee of
- 8 Defendant Collector and is engaged in the business of collecting consumer debts in
- 9 California for third parties.
- 10 9. Defendant Price is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal. Civil
- 11 Code § 1788.2.
- 12 10. Defendant ANGELA RUSSO (hereinafter “Defendant Russo”) is an employee of
- 13 Defendant Collector and is engaged in the business of collecting consumer debts in
- 14 California for third parties.
- 15 11. Defendant Russo is a “debt collector” as defined by 15 U.S.C. § 1692a(6) and Cal. Civil
- 16 Code § 1788.2.
- 17 12. Plaintiff alleges that at all times herein mentioned, each Defendant was, and is now, the
- 18 agent, servant, employee and/or other representative of the other Defendants, and in
- 19 doing the things herein alleged, was acting in the scope, purpose and authority of such
- 20 agency, service employment, and/or representative capacity with the permission,
- 21 knowledge, consent and ratification of the other Defendants.
- 22 13. Any reference hereinafter to “Defendant” or “Defendants” or “Defendant Collector”,
- 23 without further qualification is meant by the Plaintiff to refer to each Defendant named

1 above.

2 **IV. FACTUAL ALLEGATIONS**

- 3 14. Plaintiff Jason Mussynski (“Mr. Mussynski”) incurred a consumer obligation for
4 personal, family or household purposes to Metris/Direct Merchants. The debt was a
5 result of a consumer credit transaction.
- 6 15. Mr. Mussynski is informed and believes, and thereon alleges that sometime thereafter on
7 a date unknown to Mr. Mussynski, the debt was sold, assigned, or otherwise transferred
8 to Ascension Inc.
- 9 16. Ascension Inc. then hired Defendant Collector to collect the debt from Mr. Mussynski.
- 10 17. On or about September 21, 2006, Mr. Mussynski received a collection letter from
11 Defendant Collector. A true and accurate copy of the September 21, 2006 collection
12 letter from Defendant Collector to Mr. Mussynski is attached hereto, marked **Exhibit 1**,
13 and by this reference is incorporated herein.
- 14 18. **Exhibit 1** was on the letterhead, “The Offices of Phillips and Burns, LLC,” and stated in
15 part:
16 “**TO AVOID THIS YOU MUST CONTACT THIS OFFICE IMMEDIATELY**”
17 19. The signature line of **Exhibit 1** contained no signature but the name “Angela Price.”
20 (Defendant Price herein), and title, “Claims Advisor.”
21 20. The collection letter refers consumers to Defendant’s website at www.phillipsburns.com.
22 21. **Exhibit 1** falsely threatened immediate legal action not intended and not taken within the
23 time frame threatened.

- 1 22. Exhibit 1 is designed to instill a false sense to urgency in the reader.
- 2 23. Exhibit 1, and Defendant's website, made false, deceptive, and misleading statements in
3 an attempt to collect a debt or collect payment on a debt. Defendant's website misleads
4 the "least sophisticated consumer" into believing Defendant provides legal services.
- 5 24. On or about October 20, 2006, Mr. Mussynski received another collection letter from
6 Defendant Collector. A true and accurate copy of the October 20, 2006 collection letter
7 from Defendant Collector to Mr. Mussynski is attached hereto, marked Exhibit 2, and by
8 this reference is incorporated herein.
- 9 25. Statements in Exhibit 2, such as, "WITHOUT PREJUDICE," falsely represented that a
10 lawsuit had already been filed against Mr. Mussynski.
- 11 26. Exhibit 2 made false statements that Mr. Mussynski agreed to payment arrangements.
- 12 27. Exhibit 2 falsely represented that the debt had already been reported to the credit
13 bureaus⁷ by Ascension Inc.
- 14 28. Exhibit 2 made false, deceptive, and misleading statements in an attempt to collect a debt
15 or collect payment on a debt.
- 16 29. Exhibit 2 is designed to instill a false sense to urgency in the reader.
- 17 30. Exhibit 2 made a settlement offer that contradicted Defendants' threats of immediate
18 legal action in Exhibits 1. Thus, Exhibits 1 is objectively false.
- 19 31. The signature line of Exhibit 2 contained no signature but the name "Angela Russo."
20 (Defendant Russo herein).
- 21 32. On September 20, 2007 Plaintiff filed a Complaint with the Northern District of
22 California.
- 23 33. The Complaint clearly referenced that Plaintiff was represented by legal counsel, and

1 provided the name, address and telephone number of Plaintiff's counsel, as well as copies
2 of the collection letters Defendant sent to Plaintiff- with all identifying information.

3 34. Defendants were subsequently served with a copy of the Summons and Complaint.
4 Despite knowing Plaintiff was represented by legal counsel, and without the consent of
5 Plaintiff's counsel, Defendant continued to communicate with Plaintiff in an attempt to
6 collect the debt.

7 35. On or about November 20, 2007 Defendant sent a collection letter advising Plaintiff that
8 if he did not make payment on the debt:

9 **“...we will be free to pursue any available rights and remedies we may have against
10 you without further notice.”**

11 36. The letter was not signed, but contained the typed signature line:

12 **Pre-Legal Claims MGR**
13 **Phillips & Burns, LLC**

14 37. Defendants letters refer consumers to their website, www.phillipsburns.com.

15 38. Defendants website falsely represents or implies to the “least sophisticated consumer”
16 that Defendants engage in “Legal Services” and thus are attorneys. A pull down menu on
17 Defendant’s home page entitled “Our Services” leads the “least sophisticated consumer”
18 to a list of services which includes “Legal Services.” By clicking on “Legal Services” the
19 “least sophisticated consumer” is led to another web page containing false, deceptive and
20 misleading information regarding legal services provided by Defendants.

21 39. **Exhibit 3** is the relevant portion of Defendants’ website, as of December 6, 2007.

22 40. Defendants’ letterhead (“The Offices of Phillips & Burns, LLC”), language in the
23 collection letters, and misrepresentations on their website, misleads the “least
24 sophisticated consumer” into believing Defendants are attorneys.

- 1 41. Defendants are not attorneys.
- 2 42. A review of public records reveal that Defendants do not typically sue in Santa Clara
3 County. A review of public records reveals Defendants have not sued anyone in Santa
4 Clara County in the past five years.
- 5 43. Defendants communicated with someone known to be represented by counsel, falsely
6 threatened imminent suit, created a false sense of urgency, and made false deceptive and
7 misleading statements in an attempt to collect a debt. Plaintiff was upset and confused by
8 Defendants' conduct, letters and continued attempts to collect.
- 9 44. On information and belief, Defendants' collection letters, including Exhibits 1 and 2,
10 were sent to 40 or more persons in California in the one-year preceding the filing of this
11 complaint. On information and belief, Defendant's November 20, 2007 collection letter
12 was sent to 40 or more persons in California in the one-year preceding the letter. Plaintiff
13 may seek to amend to add class allegations at a later time.

15 **V. FIRST CAUSE OF ACTION**
16 **(Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*)**

- 17 45. Plaintiff incorporates by reference each and every paragraph alleged above.
- 18 46. Defendant violated 15 U.S.C. § 1692 et seq., including but not limited to, 15 U.S.C. §
19 1692c, 1692e, 1692e(5), and 1692e(10) by attempting to collect a debt through unfair and
20 deceptive means.
- 21 47. Defendants violated 15 U.S.C. 1692c by communicating with someone known to be
22 represented by counsel.
- 23 48. Defendants violated 15 U.S.C. 1692e(3) by misrepresenting a communication was from
24 an attorney.
- 25 49. Defendants violated 15 U.S.C. §§ 1692e and 1692e(5) by falsely threatening immediate

1 legal action not intended and not taken within the time frame threatened.

2 50. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) by using false, deceptive, and
3 misleading statements in an attempt to collect a debt or collect payment on a debt.

4 51. Defendants violated 15 U.S.C. §§ 1692e and 1692e(10) creating a false sense of urgency.

5 52. As a result of the above violations of the FDCPA, Defendants are liable to Mr.
6 Mussynski for statutory damages, costs and attorney's fees.

7 **VI. SECOND CAUSE OF ACTION**

8 (**California's Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code § 1788 *et seq.***)

9 53. Plaintiff incorporates by reference each paragraph alleged above.

10 54. The foregoing acts and omissions constitute unfair or deceptive and/or unconscionable
11 trade practices made unlawful pursuant to the California Rosenthal Fair Debt Collection
12 Practices Act, Civil Code § 1788 *et seq.*

13 55. Defendants violated Civil Code section § 1788.17, which requires "every debt collector
14 collecting or attempting to collect a consumer debt shall comply with the provisions of
15 Sections 1692b to 1692j" of Title 15 United States Code (FDCPA).

16 56. Defendants violated Civil Code section § 1788.17 by communicating with someone
17 known to be represented by counsel, and making false, deceptive and misleading
18 statements in an attempt to collect a debt.

19 57. Defendants violated Cal. Civil Code § 1788.13(b) by misleading the least sophisticated
20 consumer into believing they were attorneys.

21 58. Defendants violated Cal. Civil Code § 1788.13(j) by falsely representing a lawsuit had
22 been or was about to be filed against Plaintiff.

1 59. Defendants' acts described above were done willfully and knowingly with the purpose of
2 coercing Mr. Mussynski into repaying the alleged debt within the meaning of Cal. Civil
3 Code § 1788.30(b).

4 60. Pursuant to Cal. Civil Code § 1788.32, the remedies under Civil Code "are intended to be
5 cumulative and in addition to any other remedies under any other law.
6

7 WHEREFORE, Plaintiff prays that this Honorable Court grant the following relief:

- 8 A. Declare the Defendants' conduct violated the FDCPA and the state Act.
9 B. Statutory damages pursuant to 15 U.S.C. § 1692k, Civil Code § 1788.17, and Civil Code
10 § 1788.30.
11 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k, Civil Code §
12 1788.17, and Civil Code § 1788.30.
13 D. Grant such other and further relief as it deems just and proper.
14

15 Respectfully submitted,
16

17 /s/Ronald Wilcox _____
Ronald Wilcox, Attorney for Plaintiff

12/22/07
Date

19 **DEMAND FOR JURY TRIAL**

20 Please take notice that Plaintiff demands trial by jury in this action.

21 /s/Ronald Wilcox _____
Ronald Wilcox, Attorney for Plaintiff

12/22/07
Date